

**In the
Indiana Supreme Court**

IN THE MATTER OF)
LOCAL RULES)
FOR COURTS OF RECORD IN)
DECATUR COUNTY)

**NOTICE OF PROPOSED NEW LOCAL RULE ON EVIDENCE
RETENTION, HANDLING, AND DESTRUCTION AND FINDING
GOOD CAUSE TO DEVIATE FROM THE SCHEDULE FOR
ADOPTING LOCAL COURT RULES**

Notice is hereby given to the bar and the public that the Decatur Circuit and Superior Courts are adopting a new local court rule on evidence retention, handling, and destruction at **LR16-AR7-1**, effective **January 1, 2011**. The Judges of these courts find good cause to deviate from the schedule for adopting local court rules under Trial Rule 81 (D). This rule does not require Supreme Court approval to be effective.

A copy of the proposed new rule may be viewed or obtained in the office of the Clerk of Decatur Circuit Court located at 150 Courthouse Square, Suite 244, Greensburg, IN 47240. A copy may also be viewed on the Indiana Judicial website at: <http://www.in.gov/judiciary/Decatur/>.

COMMENTS

Comments on the proposed new rule will be received until **November 30, 2010** and should be sent to Matthew D. Bailey, Judge, Decatur Superior Court, 150 Courthouse Square, Suite 219, Greensburg, IN 47240, or by email: superiorcourt@decaturcounty.in.gov.

EFFECTIVE DATE

The new rule will take effect on **January 1, 2011**.

Dated this 28th day of October, 2010.

_____/S/_____
John A. Westhafer
Judge, Decatur Circuit Court

_____/S/_____
Matthew D. Bailey
Judge, Decatur Superior Court

LR16-AR7-1 Evidence Retention, Handling, and Destruction

Preamble

In all cases, the Court shall proceed pursuant to these Rules unless the Court directs a longer retention period after motion by any party or on its own motion.

(A) Retention Periods for Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Indiana Administrative Rule 7.

(B) Retention Periods for Evidence Introduced in Criminal Misdemeanor, Class D and Class C Felonies and Attempts. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the Court, three (3) years after the case is dismissed, the defendant is found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Indiana Administrative Rule 7.

(C) Retention Periods for Evidence Introduced in Criminal Class B and A Felonies and Murder and Attempts. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Indiana Administrative Rule 7.

(D) Non-documentary and Oversized Exhibits. Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

Under no circumstances should drugs, currency, or other dangerous or valuable items be included in appellate records.

(E) Disposition. In all cases, within thirty (30) days following the expiration of the applicable retention period, the parties shall take away all evidence that is in the custody of the court reporter. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence, and the receipt will be made part of the court file.

In all cases, the Court, or the sheriff on the Court's order, should dispose of evidence that is not retaken by the parties. The sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes. Indiana Code § 35-33-5-5(c)(2).

(F) Biologically Contaminated Evidence. A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however, contained, shall be handled or passed to jurors or sent to the Jury Room.